UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:)	O NI- 04 60106
)	Case No. 04-60106
Daniel Miller, d/b/a Danielson Grain,)	Chapter 11
d/b/a Danielson Trucking,)	Chapter 11
Debtor.)	
	_)	

NOTICE OF HEARING AND MOTION OF GARY HOPER AND JOHN SPINA FOR DISALLOWANCE OF EXEMPTIONS CLAIMED BY DEBTOR

- TO: DANIEL MILLER D/B/A DANIELSON GRAIN, D/B/A DANIELSON TRUCKING, HIGHWAY 2 EAST, BOX 421, EAST GRAND FORKS, MN 56721, DAVID C. McLAUGHLIN, 25 NW 2ND STREET, SUITE 102, ORTONVILLE, MN 56278, HIS ATTORNEY, AND ALL OTHER ENTITIES ENTITLED TO NOTICE OF THIS MOTION PURSUANT TO LOCAL RULES 2002-1 AND 9013-3(a)(1).
- 1. Gary Hoper and John Spina, creditors of the Debtor, move this Court to disallow various exemptions asserted by the Debtor.
- 2. The Court will hold a hearing on this motion on **June 23, 2004**, at **1:00 p.m.**, at U.S. Bankruptcy Court, 204 U.S.. Courthouse, 118 South Mill Street, Fergus Falls, MN 56537.
- 3. Any response to this motion must be filed and delivered not later than June 22, 2004, which is twenty-four (24) hours before the time set for the hearing, or filed and served by mail not later than June 20, 2004, which is three (3) days before the time set for the hearing.
- 4. This Court has jurisdiction over this motion pursuant to 28 USC § 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. An

involuntary Chapter 7 petition was originally filed against the Debtor on February 3, 2004. Subsequently, the Debtor converted this case to a Chapter 11 proceeding. This case is now pending in this Court. This motion arises under 11 USC § 522, Bankruptcy Rule 4003 and Local Rule 4003-1.

- 5. Gary Hoper and John Spina request that this Court disallow the following exemptions asserted by the Debtor:
 - a. Farming equipment with a value of \$13,000.00. The operative statute MSA § 550.37(5) speaks in terms of the exemption of particular farm machinery and implements. The Debtor should be required to list precisely what items of farm machinery and equipment the Debtor asserts are exempt. Additionally, to be eligible to declare an exemption under MSA § 550.37(5), the Debtor must be engaged in farming as an occupation. On information and belief, the Debtor is not presently involved in farming nor has the Debtor been actively involved in farming in recent years.
 - Homestead consisting of land located in Section 14, Township 148, b. Range 44, Polk County, Minnesota. The Debtor held only a grain sales license from the State of Minnesota. The bond required from the Debtor was in the sum of \$50,000.00 and was set based on the Debtor's representations of the value of crop he would hold at any particular time for which no payment had been made. The Debtor's schedules list debts due for the purchase of grain in excess of \$4,000,000.00. According to the Debtor's schedules, grain on hand is worth less than \$438,000.00. The total value of all of the Debtor's assets is less than \$1,709,000.00. It appears probable that at all times material, the Debtor knew he would be unable to pay for grain he was purchasing. This state of affairs may have continued for an extended period of time with old debts being paid from the proceeds of recently delivered grain. If the Debtor acquired title to the homestead property with proceeds diverted from the Debtor's business operations, the Debtor's exemption of his homestead should be disallowed and said property impressed with a trust in favor of unsecured creditors.

- c. Jarvis IRA in the sum of \$2,000.00 and St. Hilare/Harvest States Pension in the sum of \$38,803.00. The Debtor has failed to provide evidence indicating that these assets qualify for exemption under MSA § 550.37(24) or would be excluded from the bankruptcy estate pursuant to 11 U.S.C. § 541(c)(2). Additionally, as detailed in b above, if the evidence indicates the IRA or pension were acquired or the value of the same was increased as a consequence of the Debtor's fraud, the Debtor's attempt to exempt the same should be disallowed, and those assets impressed with a trust in favor of unsecured creditors.
- d. Cash value of life insurance in the sum of \$7,200.00. The Debtor has failed to provide evidence establishing that the cash value in any life insurance policies of the Debtor is subject to exemption under MSA § 550.37(23). Additionally, as noted in b above, if the cash value in life insurance policies was developed as a consequence of the Debtor's fraudulent conduct, exemption of the same should be disallowed and the cash value impressed with a trust in favor of the unsecured creditors.

At any hearing on this motion, movants reserve the right to call:

- a. The Debtor, who will testify as to the source of monies used to acquire the assets the Debtor seeks to declare exempt, and the Debtor's ability to pay debts incurred during the course of the Debtor's business operations; and
- b. An accountant to testify as to the source of money used to acquire the assets the Debtor seeks to exempt.

Dated this 6th day of May, 2004.

VOGEL LAW FIRM

By:

on RABrakke MN ID #10765

218 NP Avenue

P. O. Box 1389

Fargo, ND 58107-1389

(701) 237-6983

ATTORNEYS FOR GARY HOPER

AND JOHN SPINA

VERIFICATION

Jon R. Brakke, counsel for Gary Hoper and John Spina, the moving parties named in the foregoing Notice of Hearing and Motion, declares under penalty of perjury that the contents of this Motion are correct to the best of his knowledge, information and belief.

Dated this day of May, 2004.

VOGEL LAW FIRM

By:

Jon R. Brakke

#10765

218 NP Avenue

P.O. Box 1389

Fargo, ND 58107-1389

(701) 237-6983

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:)	Case No. 04-60106
Daniel Miller, d/b/a Danielson Grain, d/b/a Danielson Trucking,))	Chapter 11
Debtor.) _)	

BRIEF IN SUPPORT OF MOTION OF GARY HOPER AND JOHN SPINA FOR DISALLOWANCE OF EXEMPTIONS CLAIMED BY DEBTOR

Pursuant to MSA § 550.37(5), the Debtor has declared exempt farm machinery and equipment with a value of \$13,000.00. The statute in question allows a debtor to exempt particular items of farm machinery used in farming operations. The Debtor should be required to specify which implements are asserted to be exempt. If the Debtor refuses to specify the particular pieces of machinery and equipment the Debtor wishes to exempt, his claim of exemption under MSA § 550.37(5) and should be disallowed. The statute in question also requires the debtor be involved in farming as a condition of exempting farm machinery and equipment. On information and belief, it is stated that the Debtor is not presently involved in farming and has not been involved in farming for a number of years.

In his Schedule C, the Debtor asserts the following exemptions:

- a. Homestead;
- b. IRA;
- c. Pension plan;
- d. Cash value in life insurance.

With respect to the IRA, money in the pension plan and cash value in life insurance, the Debtor has failed to provide evidence indicating that those assets qualify for exemption under the statutes upon which the Debtor relies - MSA § 550.37(23) and (34). Additionally, the movants are concerned that all the listed assets may have been acquired through fraudulent business practices of the Debtor. The Debtor held only a grain sales license from the State of Minnesota and was required to maintain a bond of only \$50,000.00 based on the anticipated quantity of grain the Debtor would have on hand for which payment was pending. However, the Debtor's schedules disclose obligations in excess of \$4,000,000.00 for purchase of grain. Also, according to the Debtor's schedules, the amount of grain held by the Debtor in inventory is less than \$438,000.00, and the total value of assets (including exempt property) is less than \$1,709,000.00. The movants believe it is probable the Debtor had no reason to believe he could pay the debts he was incurring that are listed in his schedules. Further, movants believe that this situation may have been ongoing for a substantial period of time, with the Debtor using proceeds from recently acquired grain to pay past-due bills on previous grain purchases. If the Debtor diverted income from business operations to acquire any of the assets the Debtor declares exempt, this would constitute fraudulent conduct on the part of the Debtor warranting disallowance of the Debtor's claim of exemptions and impressing the assets with a trust in favor of the unsecured creditors.

Dated this state day of May, 2004.

VOGEL LAW/FIRM

By: ____

Jon R. Brakke MN ID #10765

218 NP Avenue P. O. Box 1389 Fargo, ND 58107-1389 (701) 237-6983 ATTORNEYS FOR GARY HOPER AND JOHN SPINA RE: Daniel Miller, d/b/a Danielson Grain and d/b/a Danielson Trucking Chapter 11 Case No. 04-60106

STATE OF NORTH DAKOTA)	AFFIDAVIT OF SERVICE
) ss	BY MAIL
COUNTY OF CASS)	

Holly A. Kittelson, being first duly sworn on oath, does depose and say: She is a resident of County of Cass, City of Fargo, State of North Dakota, is of legal age and not a party to or interested in the above entitled matter.

On the 5th day of May, 2004, affiant served the within:

- 1. Notice of Hearing and Motion of Gary Hoper and John Spina for Disallowance of Exemptions Claimed by Debtor;
- 2. Brief in Support of Motion for Disallowance of Exemptions Claimed by Debtor; and
- 3. Proposed Order

by placing true and correct copies in envelopes addressed as follows:

David C. McLaughlin Attorney at Law 212 2nd St. NW Ortonville, MN 56278

US Trustee U.S. Courthouse 300 South 4th St., Suite 1015 Minneapolis, MN 55415

Ralph F. Carter Moosbrugger, Carter & McDonagh PLLP 311 South 4th Street, Suite 101 Grand Forks, ND 58201-4782

Allen J. Flaten
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Wayne H. Swanson Swanson Law Office P.O. Box 555 Crookston, MN 56716-0555

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Daniel S. Miller 11957 Maple Lake Dr. S.E. Mentor, MN 56736

Catherine Tucker Volvo Commercial Finance P.O. Box 236131 Greensboro, ND 27402

Joe Phillip 22878 260th Avenue NE Goodridge, MN 56725

and causing them to be placed in the mail at Fargo, North Dakota with first-class postage prepaid.

Holly A. Kittelson

Subscribed and sworn to before me this 5th day of May, 2004.

(SEAL)

cc

Notary Public

CHERYL L ABELMANN Notary Public State of North Dakota My Commission Expires Apr. 28, 2010

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:)
Daniel Miller, d/b/a Danielson Grain, and d/b/a Danielson Trucking Debtor.) Case No. 04-60106)) Chapter 11))
	ORDER
The motion of Gary Hoper and J	ohn Spina for disallowance of exemptions claimed
by the Debtor came on before this Cour	rt for consideration on June 23, 2004, at 1:00 p.m.,
at the United States Bankruptcy Court	t, 118 South Mill Street, Fergus Falls, Minnesota.
Appearances were as noted on the reco	rd. Due appropriate notice of the pendency of said
motion was provided to all interested p	arties. Based on the filings and pleadings herein, it
is the order of this Court that the exen	nptions declared by the Debtor with respect to the
following assets: farm machinery and ed	quipment, homestead; IRA, pension plan, cash value
in life insurance, are disallowed. This C	ourt's findings and conclusions recited on the record
at the end of the hearing are incorporate	ed herein by reference.
Dated this day of	, 2004.
	Honorable Dennis D. O'Brien United States Bankruptcy Judge